

CRIMINAL APPEAL NO.1355 SB OF 2002

DATE OF DECISION: OCTOBER 01, 2007

Vijay Kumar

.....Appellant

VERSUS

State of Punjab

....Respondent

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. A.D.S.Sukhija, Advocate,
for the appellant.

Mr. Parveen Goyal, Sr.DAG, Punjab,
for the State.

RANJIT SINGH J.

Vijay Kumar is the sole appellant in this appeal. He is convicted for an offence under Section 376 IPC and sentenced to suffer RI for 10 years coupled with fine of Rs.5,000/-.

The facts, in brief, are that FIR in this case was lodged by Jamna Devi wife of Lal Bahadur Rorkha, resident of Akalgarh. Complainant has five children. On 7.11.1999 at about 7 P.M., her daughter, named, Bablu, studying in 1st standard went to the house of Bishan Dass, her neighbourer. It was a

Diwali day. When Bablu was returning to her house at about 8 P.M., she was caught by appellant, Vijay Kumar. He put his hand on her mouth and forcibly took her to bushes near to their house. There the appellant allegedly committed rape on Bablu against her wish by breaking the string of her salwar. The girl was left with a threat that in case she disclosed this incident to any one, she would be done to death. Undeterred, the prosecutrix Bablu disclosed this incident to her mother, who got her admitted in Civil Hospital, where she was medically examined. On a complaint lodged by Jamna Devi, a formal FIR was registered. On completion of investigation, the appellant was challaned under Sections 376/506 IPC.

In support of its case, the prosecution examined 10 witnesses. However, the prosecution would basically rely upon the version of prosecutrix, her mother and the medical evidence brought on record through the doctors, who had conducted the medical examination of the prosecutrix as well as of the appellant. The trial Court, upon believing the evidence led by the prosecution, convicted the appellant and sentenced him to suffer R.I. As already stated. This happened on July 30,2002. The appellant accordingly filed this appeal, which is pending before this Court.

This appeal was filed through Ms.Navneet Kaur, Advocate. Subsequently, the appellant had sent one application for grant of bail by post. Noticing the fact that the appellant has already undergone four and a half years of sentence as on 20.5.2004, notice for suspension of sentence was issued to the Advocate General, Punjab. On 20.7.2004, however, this application was dismissed by observing that the appellant is accused of having raped a young girl

of 8 years.

When the appeal was taken up for hearing on 18.9.2007, no one appeared on behalf of the appellant. Since the appellant had undergone a substantial portion of sentence, it was considered appropriate to hear the appeal expeditiously instead of adjourning the same after issuing notice to the appellant. Mr.A.D.S.Sukhija, Advocate, who was present in the Court, was requested to appear and assist the Court as Amicus-curiae. On his request, the case was adjourned and has been heard today.

Mr.Sukhija has made submissions in regard to various aspects of the case. Basically, Mr.Sukhija would refer to the evidence of Dr.Ravinder Verma (PW1). He would make a pointed reference to the opinion of the doctor where he has stated that it was a case of 'attempted rape'. On this basis, Mr.Sukhija would urge that prosecution could not succeed in proving the charge of rape against the appellant.

I have considered this submission made by the learned counsel appearing as Amicus-curiae. Though the doctor has so stated in his evidence but he was subsequently asked to clarify his opinion when he issued Ex.PC/1. It may be noticed that while giving his evidence PW1 has opined that **“sexual activity has been attempted on her”**. Clarification was sought from the witness in this regard, when he issued Ex.PC/1. Explaining these words, the witness stated as under in Ex.PC/1:-

“As regards the opinion regarding the word **“sexual activity has been attempted on her”**, I may here clarify that in a child of 8 years complete copulatory canal is not

formed, so only the attempt word is written. Moreover, I have written every type of injury present on local examination of the genitalia in the MLR. Pain or swelling may be result of sexual activity.”

This opinion of the doctor, which is not subject matter of any serious challenge, as can be seen from his cross-examination, would clearly show that he never meant to convey that only attempt for rape was made in this case. Sexual activity attempted would mean, as explained by the witness, to be an intercourse, especially so when this is seen in the light of other evidence regarding injuries. PW1 further gave evidence that there was a linear abrasion 1.5 cm with brown clotted blood on the left cheek. Another abrasion of 1.3 x .6 cm was present on the right cheek and brown clotted blood was also present. Hymen was lacerated with radiate tear in the posterior part. Blood oozed out and was very tender to touch. Surrounding area was swollen and tender. The prosecutrix had complained of pain in genital region. This would clearly indicate that it can not be a mere case of an attempt to rape. The doubt in this regard, if any, can be set at rest by making reference to the statement of prosecutrix PW4 Seema @ Bablu. She gave a categorical evidence that the appellant had caught hold of her and had put her hand on her mouth. Evidence further is that the appellant had broken the string of her salwar and laid her on the earth and had then committed sexual intercourse with her forcibly there. She went on to state “I also tried to resist it, but he (accused) committed sexual intercourse with me after removing his own pent.” This will not leave any doubt in regard to the fact that it was not an attempt but an actual intercourse with a

8 years girl and, thus, a rape. 8 years old girl could not be expected to fake or make false allegations against the appellant. Her family would not think of putting their honour at stake. This act would have left some permanent scars on the young mind of this child. Further corroborative evidence can be seen when PW4 stated that she received nail injuries on her cheek and had received marks of injuries on her back as well. This version is well supported by the medical evidence and the marks of injuries. The evidence of doctor would show that injuries on the cheek were noticed. There is sufficient assurance to the version given by the prosecutrix available from the facts and circumstances on record. The question of seeing the consent in this case would not arise, considering the age of the prosecutrix. The prosecutrix, though young, but was prompt enough in lodging the complaint to her mother, who went to police. She has given corroborative evidence to the version given by the prosecutrix. Thus, there is sufficient evidence available on record to bring home the offence of rape against the appellant. I do not find any infirmity in the finding recorded by the trial Court.

Faced with this situation, Mr.Sukhija would point out that the incident is of the year 1999. The appellant faced protracted trial and was convicted on 30.7.2002. His appeal is also pending for the last five years. He has not been released on bail. By now, the appellant has undergone almost a period of about 8 years of actual imprisonment. Mr.Sukhija would also point out that the appellant was also not very mature and was aged 18 years at the time of incident. He did not claim his trial as a juvenile but he was almost a juvenile and may have missed to be termed as a 'juvenile' by a whisker.

Considering the young age of the appellant at the time of incident and the fact that he has already undergone a period of about 8 years actual sentence without any respite, some leniency in the award of sentence to him may be called for.

Accordingly, while dismissing the appeal, the sentence awarded to the appellant is reduced to a period already undergone. The appellant, if in custody, is entitled to be released from jail unless required in some other case.

October 01,2007

Kfurmi

**(RANJIT SINGH)
JUDGE**